

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**IN RE: JOHNSON & JOHNSON
TALCUM POWDER PRODUCTS
MARKETING, SALES PRACTICES
AND PRODUCTS LIABILITY
LITIGATION**

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402 East State Street
Trenton, New Jersey 08608
January 26, 2021
Commencing at 2:00 p.m.

B E F O R E:

**THE HONORABLE FREDA L. WOLFSON,
CHIEF UNITED STATES DISTRICT JUDGE**

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1 (PROCEEDINGS held via remote Zoom videoconference
2 before The Honorable Freda L. Wolfson, Chief United States
3 District Judge, at 2:00 p.m.)

4 THE COURT: Okay. I think everyone I need is on the
5 screen, so we are here on videoconference. You can see my
6 court reporter, Ms. Farrell. Jackie and Wayne are on.

7 Counsel, would you place your appearances on the
8 record, please.

9 MS. PARFITT: Good afternoon, Your Honor. Michelle
10 Parfitt, counsel for the plaintiff. How are you?

11 THE COURT: Good, thank you.

12 MS. PARFITT: Good.

13 MS. O'DELL: Good afternoon, Your Honor. Leigh
14 O'Dell for the Plaintiffs' Steering Committee.

15 THE COURT: Okay.

16 MR. PLACITELLA: Happy New Year, everyone. Chris
17 Placitella. I think I have till the end of January before I
18 can't say that anymore.

19 THE COURT: Yes. Do you have a moustache or am I
20 seeing this wrong?

21 MR. PLACITELLA: I'm entertaining myself, Your Honor.

22 THE COURT: Oh, okay.

23 (Laughter.)

24 THE COURT: All right. And for the defendants?

25 MR. PLACITELLA: Wherever it will grow is okay with

1 me.

2 (Laughter.)

3 MS. SHARKO: I think I'll just enter my appearance.

4 THE COURT: I was going to say some things are better
5 left the way they are.

6 Okay, go ahead.

7 MS. SHARKO: Susan Sharko from Faegre Drinker for the
8 Johnson & Johnson defendants.

9 MS. BROWN: Good afternoon, Your Honor. Alli Brown
10 for the J&J defendants as well.

11 MR. BEISNER: And good afternoon, Your Honor. John
12 Beisner for the J&J defendants.

13 THE COURT: Okay. So the issues to address today are
14 based upon a status letter now that has been sent to me on
15 January 25th with regard to positions that the plaintiff and
16 defendant are taking in how to go forward from here to get
17 cases ready for trial.

18 And let's start with the first issue, I guess, of
19 where we are, and I think there is a request by plaintiffs'
20 counsel for an additional 30 days to complete some of this
21 discovery and depositions to be taken. But I guess also I
22 need to know from whom is discovery being taken? It's not
23 clear to me, from reading these letters actually, whether
24 there is some dispute, whether it's happening with all 30
25 plaintiffs or whether there is some limitation on plaintiffs

1 who may be proceeding to bellwether trials.

2 So just tell me what you have been doing and what you
3 think you are doing at the moment.

4 MR. PLACITELLA: Well --

5 MS. O'DELL: Your Honor --

6 MS. SHARKO: Your Honor --

7 (Simultaneous indiscernible colloquy)

8 THE COURT: Wait. One at a time.

9 Okay. Let's start with the plaintiffs. How is that,
10 okay? Go ahead.

11 MS. SHARKO: Okay.

12 MS. O'DELL: Thank you, Your Honor.

13 Phase Two discovery for these cases involved
14 essentially three depositions, at maximum: The plaintiff, if
15 the plaintiff is living, or, if the plaintiff is deceased, a
16 member of their family or representative; and then two
17 physicians. And we had a system where defense goes first in
18 some and plaintiffs go first in others, and you have up to two
19 physicians.

20 And so the challenge thus far has been the physician
21 depositions, for the most part. There may be a few
22 exceptions. The plaintiffs' depositions have gone forward and
23 will be substantially complete by the 29th, but for, in the
24 doctor depositions, they have been very difficult in some
25 instances to schedule, due to the more complex, you know,

1 schedule of the physicians. They're dealing with first of the
2 year and end of the year COVID. There have been some
3 challenges getting records in some cases. And so there has
4 been a lot of work to get those depositions scheduled and
5 taken, and, frankly, a lot of cooperation between the parties
6 to do that, among a lot of different lawyers from a lot of
7 different law firms. But we are still dealing with some
8 doctors who are not available in January, and we're trying to
9 get those accomplished as soon as February -- end of February
10 as we can, but there is just some where the doctor is not
11 available.

12 So we believe with 30 days, we could get that
13 accomplished, and that was the import of our request.

14 THE COURT: Okay. Ms. Sharko, go ahead.

15 MS. SHARKO: In the case management order which we
16 negotiated and to which we all agreed there would be 30 cases,
17 as Ms. O'Dell said, up to three depositions per case, and,
18 importantly, we agreed that no deposition would be waived if
19 it wasn't taken in this phase. So the treaters don't have to
20 be deposed now. We can wait and see if any of the -- which
21 cases go on to the smaller pool that will be worked up as
22 trial candidates.

23 And there has been the usual raft of issues that come
24 in these types of proceedings -- they don't have the records,
25 they don't have the authorizations, somebody died, et cetera,

1 and we have been able to navigate successfully through all
2 those.

3 We won't have all the depositions completed by our
4 self-imposed deadline. Ms. O'Dell is correct. And we're
5 willing to continue going forward, taking the depositions, and
6 I think the order allows us to do that, frankly, but our
7 concern is we want to move on to the next phase.

8 And what the order has contemplated was in January we
9 would meet and confer and agree upon a path forward to
10 recommend to Your Honor, which really would be narrowing the
11 pool of 30 to a much smaller pool to go through expert
12 discovery, case-specific *Daubert* motions, and then trial. And
13 we don't want that to be delayed by another month or longer of
14 trying to depose doctors who can be deposed down the road if
15 they need to, if a specific case is selected.

16 MS. PARFITT: Your Honor, if I could respond. With
17 regard to -- and Susan said a few things.

18 One, these are self-imposed deadlines that the Court
19 agreed, but, indeed, if the issue were that we were expecting
20 these depositions not to be able to be taken, that there has
21 been some real obfuscation of the system, I think that would
22 be a different issue. But, frankly, what we're seeing is --
23 you know, we're trying to accommodate doctors. They are
24 certainly -- their lives have been, like all of ours, made
25 very, very challenging from the situation, and they're trying

1 to take care of their patients, and they're trying to
2 accommodate us as well. And we're not seeing a situation
3 where it's de facto, I'm not going to show up. They just need
4 a little more time.

5 And with regard to what Ms. Sharko has indicated,
6 that's just [audio distortion] down the road, the
7 problem with --

8 THE COURT: Hold on. For some reason I have got
9 everybody frozen on here. Just a moment.

10 MS. PARFITT: Of course.

11 THE COURT: Hello?

12 MS. PARFITT: Hello.

13 THE COURT: I have everybody frozen. I don't know if
14 you can hear me or not.

15 MS. PARFITT: You are --

16 THE COURT: I'm going to see if that helped.

17 MS. PARFITT: That's good.

18 THE COURT: Of course, I don't see anybody.

19 THE COURTROOM DEPUTY: Your box is frozen but we can
20 hear you.

21 THE COURT: Okay. My screen froze but I see you all
22 now, so let's try again.

23 So, Ms. Parfitt, I missed most of what you were
24 saying, other than saying these were self-imposed deadlines,
25 and then I kind of lost you. Okay.

1 MS. PARFITT: No problem at all. If that happens
2 again, just let me know. It will slow me down, so that's
3 probably a good thing.

4 I did talk about self-imposed deadlines. The point
5 with regard to that is the doctors have been doing all they
6 can to accommodate the needs of their patient, and, frankly,
7 to accommodate our needs, and it's not a situation where we
8 are finding doctors -- and the lawyers, frankly, on either
9 side, trying to obfuscate the problem, trying to take their
10 good old time and delay a process.

11 The problem with what Ms. Sharko proposes is that
12 what we all agreed is we would have 30 cases and we would
13 limit the discovery, and limit the discovery we have, and the
14 Court approved that, and taking the doctors' depositions down
15 the road doesn't then allow both sides, frankly, to get a view
16 of what that case may look like.

17 The next step would be for the Court to advise the
18 plaintiffs to start making some type of selection out of that
19 30, and the Court will advise us as to -- and hopefully today
20 we can hear more from the Court on that -- but advise us with
21 regard to how many cases does the Court anticipate we need to
22 narrow down from the 30. And in order for both sides to do
23 that, we need to have more information as well, and the more
24 information is simply the three depositions that the Court has
25 approved.

1 So it's cutting short the process for, what, save 30
2 days? And so all we're suggesting is the Court do what the
3 Court had ordered, and that is, you get your three depositions
4 for your 30 cases, and then we move on to the next phase.

5 THE COURT: All right. I'm fine. Take your 30 days
6 to complete these depositions, but I don't want it to go
7 longer, and if it's not done within that time period, then we
8 will move forward.

9 MS. PARFITT: All right. Thank you, Your Honor.

10 THE COURT: All right? So get them done.

11 All right. So let's turn to what's next after that.

12 A couple of things in talking about narrowing the
13 pool and some of the things that everyone wants to see done.

14 With regard to trying these cases, I think that,
15 first of all, I need to know, are there cases that -- how many
16 categories, I guess, of cases do we have? What are we talking
17 about that are representative of these plaintiffs in this
18 litigation? Are there categories?

19 MS. PARFITT: Yes, there are.

20 MS. SHARKO: If you --

21 THE COURT: Excuse me?

22 MS. SHARKO: If you go by type of cancer?

23 THE COURT: Yes.

24 MS. SHARKO: The type of cancer, in the pool of 30 --
25 and, actually, this is the old pool of 30. One of the

1 plaintiffs dropped out and was replaced --

2 THE COURT: Right.

3 MS. SHARKO: -- recently. You have 18 high-grade
4 serous, three clear cell, five endometrioid, one mucinous, one
5 serous -- they're not sure whether it's high grade or low
6 grade -- and one unknown.

7 And then you have -- we have plaintiffs from about
8 ten different states. Probably half of the plaintiffs were
9 diagnosed before the age of 60; 16 were diagnosed before 2016.
10 Those are the highlights of how they're different.

11 MS. O'DELL: Your Honor -- excuse me. I apologize.

12 THE COURT: No, go ahead.

13 MS. O'DELL: I would just say we take a little bit
14 different view, in the sense that -- just slightly, but 70
15 percent of the cases in the pool are high-grade serous, and
16 serous is the most common form of epithelial ovarian cancer,
17 and, as Your Honor will recall, that's the focus of the
18 experts in this case. And so, for that reason, we think
19 serous ovarian cancers would be the group of cases that should
20 be focused on.

21 That's representative also, as best we can tell, of
22 the overall group of 966 cases that submitted profile forms.
23 It's in the range of 65 to 70 percent serous, and so we think
24 for purposes of bellwether, in learning more about the overall
25 group of cases that have been filed in the MDL and what the

1 strengths and weaknesses are that you would like to learn in a
2 bellwether process, a serous ovarian cancer makes the most
3 sense.

4 THE COURT: Okay.

5 MS. SHARKO: So when we went through the overall pool
6 of 1,000, it looked to us that about only a third were
7 high-grade serous, but we don't think the only case that
8 should be tried is a high-grade serous. There are all these
9 other subtypes that we have to deal with.

10 THE COURT: I think --

11 MS. PARFITT: If I could respond -- I'm sorry, Your
12 Honor.

13 THE COURT: No, go ahead.

14 MS. PARFITT: I would say out of the total, we also
15 looked at the 966 cases, as did defendant, and serous, whether
16 high, low, or not sure low or high, was almost 63 to 65
17 percent. So I think that that's a fairly representative
18 group, even -- which is interesting that the numbers, the
19 percentages do indeed seem to match, whether you look at the
20 thousand or you look at the 30 that Your Honor -- so I think,
21 if I can just say to the Court, I think the system that the
22 Court employed has worked. I think it's representative of
23 even a larger group.

24 THE COURT: Okay. So what you're telling me, though,
25 is your number is -- the vast majority are serous cases, but

1 high, low are both included within that --

2 MS. PARFITT: Right.

3 THE COURT: -- without distinguishing whether it's
4 high or low.

5 MS. PARFITT: That's correct.

6 THE COURT: Okay. What is it else, Ms. Sharko, that
7 you're talking about you think needs to be as part of a first
8 bellwether group?

9 MS. SHARKO: I think we also need to look at how the
10 case came to be in the pool. And what I had suggested to the
11 plaintiffs was there are ten plaintiff picks, ten random, and
12 ten defense picks, that we each pick one from the plaintiff,
13 the random, and the defense groups. That would give us six.
14 We work those up through expert discovery and case-specific
15 *Daubert* motions, and then whatever is left, present to Your
16 Honor, and figure out what would be most representative to try
17 as single plaintiff cases.

18 THE COURT: I will say -- and let me just say this
19 and I'm not going to get into a discussion on it. I'm not
20 trying multi-plaintiff cases. They are going to be
21 single-plaintiff cases. So let's put aside that idea.

22 So looking at single-plaintiff cases only, I have
23 just heard Ms. Sharko's suggestion. Let me hear from
24 plaintiffs.

25 MS. O'DELL: I think, Your Honor, one of the things

1 we would need to know, in order to pare down to an appropriate
2 number, is what Your Honor's thinking is in terms of the
3 number of trials, if you had in mind one trial or two trials
4 or another number, and --

5 THE COURT: Well, I guess what I was thinking is --
6 that's why I asked what is representative. I mean, so my
7 proposal would be, of course, perhaps the first one should be
8 out of the group that's most prevalent here, the serous group,
9 let's say, we take some from that, whether it's a high and a
10 low. And I guess that's why I was asking what are other
11 representative groups here, and I would propose maybe trying
12 one from each of those kinds of groups, but that's it.

13 And, of course, we know, sadly, the reality of where
14 we are because of COVID and the back-up for civil cases. And
15 I'm going to be very, very candid with you today, which is
16 that, in fact, I had our Clerk's Office run for me every
17 judge's backlog of case-ready cases, both civil and criminal,
18 which I thought was not going to be so bad, and then I got the
19 list from all the judges, and I was disheartened and kind of a
20 little depressed about it. But, I will say, you know we're
21 going to have to have our push for our criminal first.

22 I can tell you, for instance, on my list, I'll have
23 more than that, but, I mean, I have three cases that were
24 supposed to be tried last year when COVID hit, and those
25 involve individuals who have been in custody. They have been

1 in custody pretrial for more than two years now. I won't even
2 go there. I can't even think about that. We've let some
3 people out, as you know. It's not your day to talk about
4 criminal, but I'm kind of giving you a flavor of,
5 unfortunately, where we are. And we have to -- I have to
6 address my cases of those who have been in custody for so long
7 without getting to trial. So those are first. And some of
8 them are three-week trials, some are a week-long trial, but
9 even with that, we're talking about not going full force until
10 we're in a much better place with vaccines.

11 Our plan is looking at, when we can get back and
12 think we can safely have a jury, doing one jury trial at a
13 time in a courthouse until we feel again more comfortable, and
14 then maybe two, and moving on. But we're a long way from full
15 trial schedules in each of our courthouses. So, and everyone
16 has back-up criminal cases.

17 So I don't have an optimistic view of where I am on
18 civil caseload. This is an MDL that's been here for awhile.
19 I would like to get to your trials as quickly as possible, but
20 the reality is it's not going to happen as quickly as you
21 might be ready for me.

22 I don't know what's going on. Okay.

23 MS. O'DELL: We lost your picture, Your Honor.

24 THE COURT: I know, but I lost everybody. You're all
25 frozen. So I'm trying to -- I actually was thinking of

1 getting out of here and coming back in again totally.

2 MR. PLACITELLA: Your Honor, my IT people tell me
3 that there is massive internet outages on the East Coast. You
4 might be --

5 THE COURT: I see you now again and you're moving,
6 but -- okay.

7 So, anyway, that's really the unfortunate reality of
8 where we are.

9 So what I'd like to do is get you all ready for where
10 we need to be, so for some reason too, we all know that when
11 things can open up for trial and I can give somebody an actual
12 trial date, I may get a plea, for those who have been sitting
13 back. Although you would think for those who have been in
14 custody so long, I have gotten some pleas, and we have been
15 taking pleas and doing sentencings. The only things we're not
16 going are jury trials. We have been doing bench trials. I
17 have been doing patent trials. I have another one in March.
18 So they're happening. That's not our backlog. It's those
19 jury trials.

20 And so, in any event, what I would like to do is
21 rationally go forward in coming up with what you need to do to
22 get us ready so I can have those cases ready when I am ready,
23 our court is prepared, but understanding it's not going to
24 happen as quickly as you'd all like, so it's not like hurry up
25 and get ready, if you understand what I'm saying. Let's do

1 this in a reasoned fashion.

2 But, by the same token, I did notice that the
3 comments by defense counsel about wanting to bring perhaps
4 *Daubert* motions on specific causation issues, that there could
5 be other kinds of dispositive motions, statute of limitations
6 motions. Motions I can handle in a pandemic, so my view is we
7 don't delay on those. When they're ready to go, let's do
8 them.

9 MS. SHARKO: Okay.

10 THE COURT: And even the notion of a *Daubert* motion
11 that might require an evidentiary hearing or even a witness,
12 I've done those. I've done *Daubert* hearings in my patent
13 cases. I can get witnesses on, on a Zoom, even if we're not
14 in the courtroom. So those are things we can move on so that
15 we really are in a position of trying a case that's not going
16 away on motion, and ready to go, so there are things we can
17 do.

18 Having said all that, I don't know if that helps you
19 at all on what you propose to do next.

20 MS. O'DELL: Your Honor, I guess that's information
21 that -- I know for Michelle and Chris and myself, we need to
22 confer with our Executive Committee. They'll all have views
23 that would inform the process.

24 But I would just say in terms of representative
25 cases, going back to subtypes, and, you know, serious is the

1 grand majority, and so from other subtype standpoints, I just
2 wanted to clarify what you're saying.

3 Are you thinking that you would try a serous case,
4 and that you would want to try another subtype, even though it
5 might not be representative? Because some of them are quite
6 small. I mean, for example, clear cell is a type of -- a
7 subtype of cancer. There are only 48 of those 966 in the pool
8 by our count. That doesn't seem to be representative. Even
9 in the literature, that's a very small percentage of cases.
10 So just wanted to have a little more clarity from the Court on
11 that point, as we try to devise a strategy.

12 THE COURT: Well, why don't we do the following then.
13 And I was going to ask if you needed the status conference on
14 the 9th, so maybe we'll keep that status conference on the 9th
15 so we could talk about this a little more.

16 I think what I would like you to do then is come
17 up -- Ms. Sharko has indicated the defendants have a view of
18 what the representative types are, and it sounds like a lot.
19 You may have a different view. But let's come up with what
20 they all may be, and how many fit within there, and then I
21 could tell you -- no, I'm not going to try a case where I've
22 got 15 plaintiffs in there. That's not what I'm looking to
23 do.

24 So let's see what the various groupings are, send me
25 something before the 9th that tells me that, the number that

1 fit within, and then we will come up what we think are
2 representative groups, okay? And how many trials, and how
3 many I could do, and when I can do them.

4 But we will go with the idea that the serous cases,
5 which are the majority, will certainly be the first trial that
6 I will schedule, and it could be a serous low, serous high,
7 whatever you're telling me the different subgroups of that may
8 be, to assist you as well.

9 Let's talk about, too, though, what is required to
10 get to some of the motion practice that you think is
11 dispositive motion practice on the defense side.

12 MS. SHARKO: So, I think we need expert discovery,
13 particularly on the cases -- well, really on all the subtypes,
14 but particularly on the non-high-grade serous. Each case is
15 different, and so I think it's more likely than not that we'll
16 have a case-specific *Daubert* motion in each case.

17 THE COURT: Okay.

18 MS. SHARKO: And then there also may be -- you may be
19 able -- and from that, those motions may well affect smaller
20 groupings. For example, if there are only 32 mucinous cases
21 but we have one in the pool, you could hear a case-specific
22 *Daubert* motion on mucinous cancer, and that would deal with
23 that group of cases in the plaintiffs' inventory.

24 So for the *Daubert* motions, we'll need the
25 case-specific expert discovery done.

1 For the statute of limitations motions, we probably
2 need plaintiffs' depositions, and we're chugging along on
3 those.

4 MS. PARFITT: Your Honor, could I respond to that, if
5 I may?

6 THE COURT: Yes. Sure.

7 MS. PARFITT: Perhaps it's a clarification, and
8 perhaps I misunderstood the Court as well. But taking
9 everything you've just said into consideration with regard to
10 the demands of your Court and, frankly, all of your judges and
11 you, in particular, with the role that you have, does it make
12 some sense to first figure out which -- let's narrow it down.
13 We have 30 days, and perhaps the Court will consider, and I
14 guess we can talk about this, but I just want the Court to
15 perhaps consider before we meet again in February, but
16 shortly, we will be able to narrow down from that 30 a core
17 group of cases. And in that core group, whatever the Court
18 decides, if you say six is a good number, or four, whatever
19 you feel is best, depending on the total number that you
20 think, then we have those motions. But why would we -- if
21 there are 26 cases that aren't going to be further discovered
22 for another year or another two years -- one thing Your Honor
23 certainly recognized, I think, during the *Daubert* proceeding
24 is things change, both for the good and the bad, for
25 plaintiffs and for defendants. Science changes. We would

1 like to say that it's getting stronger for us. Defendants
2 will say no, it's getting weaker. But it would seem to me
3 that before the Court makes that kind of adjudication, we
4 figure out -- let's focus on what we have. And you're
5 absolutely right when you talk about realistically looking
6 forward and what we can all accomplish, despite what we all
7 want to do. We'd all like to take care of all the cases today
8 and you'd like to clear your calendar for all your judges.

9 But it seems to me if we focus on the narrower group,
10 Your Honor doesn't have 30 different motions or 60 different
11 motions, depending on the topic. You may have -- you'll have
12 some additional motions to look at, but at least it's ripe and
13 maybe in time with regard to the actual progress of those
14 cases. So just a comment perhaps for all of us to consider.

15 THE COURT: I'm frozen again.

16 Hello?

17 MS. PARFITT: Hello.

18 THE COURT: Okay. Now you're back again. Sorry
19 we're having such a bad connection.

20 MS. PARFITT: No, it's perfectly understandable.

21 THE COURT: Yes, okay.

22 I'd like to refine this, and I don't know that it's
23 going to be satisfied today or accomplished. I need a little
24 more information, as I said. I'm going to let you go and come
25 back to me with, as I said, some of these categories, and

1 obviously, nobody is filing a motion in the next two weeks,
2 and so -- and, in fact, as Ms. Sharko said, it's going to also
3 be dependent on taking expert discovery in specific cases. So
4 we're not there. And I understand what you want to work up,
5 not work up, but we'll talk about it.

6 And, look, I am hopeful too, besides my issues with
7 criminal cases and COVID, that sometime during 2021, as I tell
8 my judges here, that we're going to get judges to fill our
9 vacancies, and we still have our six vacancies, but we have
10 two Democratic senators, and we now have a Democratic
11 president and a Senate that the Chief of Staff of the Senators
12 have been optimistic that we're going to move ahead, but I
13 think the earliest we'll see any judges anyway may be the
14 summer. But that will help reduce our loads a bit, and maybe
15 once we can open things up, that will help move it along too.
16 So I'm not saying that we're going to be slowing down anyone.
17 I want to go forward.

18 First of all, if I have a criminal case that goes by
19 the wayside and I only have one to try or two to try, as
20 opposed to ten, and even though I may have some civil cases
21 backed up, I'm getting my patent cases, which are the only
22 time-sensitive ones under Hatch-Waxman, because they have
23 30-month stays only, that we're getting done on Zoom anyway.
24 This is the kind of thing that may take priority over another
25 civil case I have.

1 So let's get ready. Let's go with that idea as well.
2 And we know there is lag time when we have motions, and if the
3 motions have to be decided before I can get to a trial, then I
4 want to move ahead on those too, so I can be ready to go.

5 I would like to try these sometime in my lifetime,
6 and so let's get there, and we need a little more education.

7 So I guess the question I want to ask, too, is: Here
8 we are on January 26 with this next conference scheduled on
9 February 9th. Can you educate me enough on February 9th or
10 should me move that date a bit to give you a little more time?

11 MS. SHARKO: I think we're okay for February 9th.

12 THE COURT: Okay.

13 MS. PARFITT: And, Your Honor, I was going to say
14 maybe -- maybe a little bit later, just so we can give to the
15 Court as much information -- and, frankly, we will also have
16 more depositions conducted by then, hopefully, but I guess we
17 can go either way. Leigh, do you have a preference?
18 Perhaps --

19 MS. O'DELL: No.

20 THE COURT: Does anybody have a preference? I don't
21 really care. I mean, the 9th is obviously still fine for me.

22 MS. O'DELL: Your Honor, if you had a little
23 availability the following week, that might help us, but we
24 can make whatever is best for you work.

25 THE COURT: Okay. I have -- the 15th, by the way, is

1 a holiday. That's Presidents Day. And the 16th I'm pretty
2 wide open. The 17th, yes, it looks like I could accommodate
3 you in the afternoon. Or the 18th, I just see one Zoom in the
4 afternoon, Jackie. That morning sentencing won't happen
5 because we're not in court, right?

6 THE COURTROOM DEPUTY: I'm not sure if they're
7 consenting yet.

8 THE COURT: Oh, okay.

9 THE COURTROOM DEPUTY: The 16th or the 17th we could,
10 just to be safe.

11 THE COURT: Yes.

12 MS. SHARKO: Those are okay for me.

13 MS. PARFITT: Likewise.

14 THE COURT: Why don't we do the -- Jackie, do you
15 think that sentencing in the morning on the 17th, the one that
16 was supposed to be in court, is going to happen by Zoom or
17 they're not going to consent?

18 THE COURTROOM DEPUTY: I don't know. I'm waiting for
19 the order to send out e-mails, so I don't know yet.

20 THE COURT: Okay. Well, let's set it up for the
21 afternoon, just in case. Let's do the 17th at 2:30. Okay?
22 And we'll cancel the 9th. So we'll do that day, and that
23 gives us a little time.

24 And you know I want to receive a status from you in
25 advance so --

1 MS. PARFITT: Of course.

2 THE COURT: -- if you can get it to me. As I said,
3 Monday is a holiday. I mean, I'll still read it, but get it
4 to me by the 16th. Okay? The day before. That's fine.

5 MS. SHARKO: Okay.

6 MS. O'DELL: Okay. Thank you.

7 MS. PARFITT: Thank you.

8 THE COURT: I can look at whatever you want to send
9 me, and we'll go from there.

10 And then maybe you can also define for me in that
11 letter what a schedule might be for any dispositive motions
12 and what they depend on, what they depend on happening to get
13 that motion ripe.

14 MS. SHARKO: Okay.

15 MS. PARFITT: All right.

16 MS. O'DELL: Okay.

17 THE COURT: So, okay, there we are. Anything else
18 that we need to talk about?

19 MS. SHARKO: No.

20 MS. O'DELL: No, thank you.

21 MS. PARFITT: No, thank you.

22 THE COURT: Give you a little bit of guidance.

23 I will say I was very confused as I read the status
24 letter because there was a reference by plaintiffs to Phase
25 Three cases, and it made me go back to all my orders, and

1 there was nothing defined as Phase Three and I couldn't find
2 it anywhere. And then I decided, oh, Phase Three must be what
3 you're just defining we'll call the next stage, but I was very
4 concerned because there was no definition of Phase Three
5 anywhere, and I had my clerk dig out all my old orders and it
6 wasn't there.

7 MS. O'DELL: Oh, I'm sorry, Your Honor. I was
8 coining a phrase. I was naming the narrowed group, so I
9 apologize.

10 THE COURT: That's okay. Just I didn't want to miss
11 anything here and it sent us on a little bit of a chase but
12 it's quite all right.

13 All right. Everybody else is fine, your families are
14 fine?

15 MS. SHARKO: Yes. Thank you.

16 MS. PARFITT: Thank you.

17 THE COURT: Anybody get vaccines yet?

18 MS. PARFITT: I did. I did.

19 MS. SHARKO: Wow.

20 MS. PARFITT: I did. I'm a caretaker for a
21 94-year-old, so yeah.

22 THE COURT: Okay. Oh, good. Well, I'm scheduled for
23 Thursday.

24 MS. PARFITT: Well, you say that's good. I don't
25 know, Your Honor. We'll talk.

1 THE COURT: Well, I have an appointment for Thursday,
2 so, and I've gotten a confirmation. In New Jersey, yesterday,
3 they had to cancel one of the mega centers. They didn't have
4 enough doses. Now, mine is at a specific site, not one of the
5 megas, so I have been told at the hospitals and things that if
6 they say that you're scheduled, you are going to get it. It's
7 been tough here in New Jersey. But, as I've said to a number
8 of people, who knew being a senior citizen could reap such
9 benefits for you? So there we are. That's one of them,
10 that's right.

11 MR. PLACITELLA: Plan a good part of your day, Your
12 Honor. I took my parents yesterday and they had a specific
13 time, 11:10 a.m. I was there a good three hours.

14 THE COURT: Really? Where did you go? Where did you
15 go, Chris, for yours?

16 MR. PLACITELLA: I went to Ocean County Health
17 Initiative because it's near their house, and it was by
18 specific appointment. It wasn't a mass site.

19 THE COURT: Right.

20 MR. PLACITELLA: But allot some time.

21 THE COURT: Okay. Well, mine is like a 9:10
22 appointment at Robert Wood.

23 MR. PLACITELLA: Oh, good.

24 THE COURT: And I'm hoping it's going to be pretty
25 close to on time, and we'll see, you know, whatever.

1 MR. PLACITELLA: Right.

2 THE COURT: And I know someone who is going there
3 today, and they'll give me an idea, and tomorrow, so we will
4 see.

5 Well, this is the line I've used. I sent this out to
6 some friends on New Year's day, some family and friends, just
7 saying, "Wishing everyone a happy, healthy, safer, saner,
8 vaccinated 2021." Well, not much of that has happened, as we
9 well know, and so it's become more aspirational than real, but
10 let's hope that that does occur as we move along, and that --
11 we do have concerns, I will say, and all of you practice --
12 some of you practice in different districts, though -- what we
13 can require of our employees also in coming back, so that we
14 can really engage in these trials, and there's lots of
15 discussion going on in the court, and our understanding is we
16 cannot require federal employees to be vaccinated. So, you
17 know, we know we can't require anyone for religious reasons or
18 health reasons, but -- apparently, states can do it is what
19 we're hearing, for health and safety reasons, and make certain
20 requirements, but we can't in the judiciary, so I don't know
21 what that's going to do to us too.

22 MS. SHARKO: It's interesting. My oldest son is
23 forward deployed in the Navy, and he said the Navy announced
24 that they can't require people to get vaccinated.

25 THE COURT: So similar sounding like some of our

1 federal issues.

2 MS. SHARKO: Yes.

3 THE COURT: And it's more becoming a state health and
4 welfare type issue, and that can happen on that level. But
5 that's going to be a problem for us.

6 Our courtrooms are all retrofitted with plexiglass
7 and all the other stuff in that sense, not our jury boxes, and
8 that's why we still have some issues there, but -- and,
9 anyway, well, we'll see where we go.

10 Okay. Well, it's good to hear you're all well, and
11 I'll see you next month. Okay? Thank you.

12 (The proceedings concluded at 2:35 p.m.)

13

14 - - - - -

15

16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.

18

19 /S/ Carol Farrell, NJ-CRCR, FCRR, RDR, CRR, RMR, CRC, CRI
20 Court Reporter/Transcriber

21 January 28, 2021
22 Date

23

24

25

/	4	<i>agree</i> [1] - 7:9 <i>agreed</i> [4] - 6:16, 6:18, 7:19, 9:12 <i>ahead</i> [7] - 4:6, 5:10, 6:14, 11:12, 12:13, 22:12, 23:4 <i>aided</i> [1] - 1:25 <i>AL</i> [1] - 1:22 <i>ALLEN</i> [1] - 1:20 <i>Alli</i> [1] - 4:9 <i>ALLISON</i> [1] - 2:11 <i>allot</i> [1] - 27:20 <i>allow</i> [1] - 9:15 <i>allows</i> [1] - 7:6 <i>almost</i> [1] - 12:16 <i>AND</i> [1] - 1:5 <i>announced</i> [1] - 28:23 <i>anticipate</i> [1] - 9:21 <i>anyway</i> [4] - 16:7, 22:13, 22:23, 29:9 <i>apologize</i> [2] - 11:11, 26:9 <i>appearance</i> [1] - 4:3 <i>appearances</i> [1] - 3:7 <i>appointment</i> [3] - 27:1, 27:18, 27:22 <i>appropriate</i> [1] - 14:1 <i>approved</i> [2] - 9:14, 9:25 <i>ARPS</i> [1] - 2:10 <i>ASHCRAFT</i> [1] - 1:17 <i>aside</i> [1] - 13:21 <i>aspirational</i> [1] - 28:9 <i>assist</i> [1] - 19:8 <i>audio</i> [1] - 8:6 <i>authorizations</i> [1] - 6:25 <i>availability</i> [1] - 23:23 <i>available</i> [2] - 6:8, 6:11 <i>AVENUE</i> [2] - 2:3, 2:12 <i>awhile</i> [1] - 15:18	<i>Beisner</i> [1] - 4:12 <i>bellwether</i> [4] - 5:1, 11:24, 12:2, 13:8 <i>bench</i> [1] - 16:16 <i>benefits</i> [1] - 27:9 <i>best</i> [3] - 11:21, 20:19, 23:24 <i>better</i> [2] - 4:4, 15:10 <i>between</i> [1] - 6:5 <i>BIDDLE</i> [1] - 2:6 <i>bit</i> [6] - 11:13, 22:14, 23:10, 23:14, 25:22, 26:11 <i>box</i> [1] - 8:19 <i>BOX</i> [1] - 1:21 <i>boxes</i> [1] - 29:7 <i>bring</i> [1] - 17:3 <i>BROWN</i> [2] - 2:11, 4:9 <i>Brown</i> [1] - 4:9 <i>Building</i> [1] - 1:8 <i>BY</i> [6] - 1:14, 1:17, 1:20, 2:3, 2:6, 2:11	15:6, 15:16, 16:22, 17:13, 17:25, 18:9, 19:4, 19:13, 19:20, 19:23, 20:17, 20:21, 21:7, 21:14, 22:3, 22:7, 22:20, 22:21, 25:25 <i>categories</i> [3] - 10:16, 10:18, 21:25 <i>causation</i> [1] - 17:4 <i>cell</i> [2] - 11:4, 18:6 <i>centers</i> [1] - 27:3 <i>certain</i> [1] - 28:19 <i>certainly</i> [3] - 7:24, 19:5, 20:23 <i>certify</i> [1] - 29:16 <i>cetera</i> [1] - 6:25 <i>cfarrell.crr@gmail.com</i> [1] - 1:24 <i>challenge</i> [1] - 5:20 <i>challenges</i> [1] - 6:3 <i>challenging</i> [1] - 7:25 <i>change</i> [1] - 20:24 <i>changes</i> [1] - 20:25 <i>chase</i> [1] - 26:11 <i>CHERRY</i> [1] - 1:15 <i>CHIEF</i> [1] - 1:11 <i>Chief</i> [2] - 3:2, 22:11 <i>Chris</i> [3] - 3:16, 17:21, 27:15 <i>CHRISTOPHER</i> [1] - 2:3 <i>chugging</i> [1] - 20:2 <i>citizen</i> [1] - 27:8 <i>CIVIL</i> [1] - 1:3 <i>civil</i> [5] - 14:14, 14:17, 15:18, 22:20, 22:25 <i>clarification</i> [1] - 20:7 <i>clarify</i> [1] - 18:2 <i>clarity</i> [1] - 18:10 <i>Clarkson</i> [1] - 1:8 <i>clear</i> [4] - 4:23, 11:4, 18:6, 21:8 <i>clerk</i> [1] - 26:5 <i>Clerk's</i> [1] - 14:16 <i>close</i> [1] - 27:25 <i>Coast</i> [1] - 16:3 <i>COHEN</i> [1] - 2:2 <i>coining</i> [1] - 26:8 <i>colloquy</i> [1] - 5:7 <i>comfortable</i> [1] - 15:13 <i>coming</i> [3] - 16:1, 16:21, 28:13 <i>Commencing</i> [1] - 1:10 <i>comment</i> [1] - 21:14 <i>comments</i> [1] - 17:3 <i>COMMERCE</i> [1] - 1:21 <i>Committee</i> [2] - 3:14,
/S [1] - 29:19	402 [1] - 1:8 4160 [1] - 1:21 48 [1] - 18:7			
0	6			
07701 [1] - 2:4 07932 [1] - 2:7 08002 [1] - 1:15 08608 [1] - 1:9	60 [2] - 11:9, 21:10 600 [1] - 2:7 63 [1] - 12:16 65 [2] - 11:23, 12:16			
1	7			
1,000 [1] - 12:6 101 [1] - 1:15 11:10 [1] - 27:13 127 [1] - 2:3 1440 [1] - 2:12 15 [1] - 18:22 15th [1] - 23:25 16 [1] - 11:9 16th [3] - 24:1, 24:9, 25:4 17th [4] - 24:2, 24:9, 24:15, 24:21 18 [1] - 11:3 1825 [1] - 1:18 18th [1] - 24:3	70 [2] - 11:14, 11:23 8 856-318-6100 [1] - 1:24 9 94-year-old [1] - 26:21 966 [3] - 11:22, 12:15, 18:7 9:10 [1] - 27:21 9th [8] - 18:14, 18:25, 23:9, 23:11, 23:21, 24:22			
2	A		C	
20005 [1] - 2:12 20006 [1] - 1:18 2016 [1] - 11:9 2021 [4] - 1:9, 22:7, 28:8, 29:21 210 [1] - 1:15 218 [1] - 1:21 25th [1] - 4:15 26 [3] - 1:9, 20:21, 23:8 28 [1] - 29:21 29th [1] - 5:23 2:00 [2] - 1:10, 3:3 2:30 [1] - 24:21 2:35 [1] - 29:12	a.m [1] - 27:13 able [4] - 7:1, 7:20, 19:19, 20:16 above-entitled [1] - 29:17 absolutely [1] - 21:5 accommodate [5] - 7:23, 8:2, 9:6, 9:7, 24:2 accomplish [1] - 21:6 accomplished [3] - 6:9, 6:13, 21:23 actual [2] - 16:11, 21:13 additional [2] - 4:20, 21:12 address [2] - 4:13, 15:6 adjudication [1] - 21:3 advance [1] - 24:25 advise [3] - 9:17, 9:19, 9:20 affect [1] - 19:19 afternoon [7] - 3:9, 3:13, 4:9, 4:11, 24:3, 24:4, 24:21 age [1] - 11:9	B		
3				
30 [17] - 4:20, 4:24, 6:12, 6:16, 7:11, 9:12, 9:19, 9:22, 10:1, 10:4, 10:5, 10:24, 10:25, 12:20, 20:13, 20:16, 21:10 30-month [1] - 22:23 32 [1] - 19:20 36104 [1] - 1:22 3:16-md-2738-FLW- LHG [1] - 1:4		back-up [2] - 14:14, 15:16 backed [1] - 22:21 backlog [2] - 14:17, 16:18 bad [3] - 14:18, 20:24, 21:19 BANK [1] - 2:4 based [1] - 4:14 BEASLEY [1] - 1:20 become [1] - 28:9 becoming [1] - 29:3 BEISNER [2] - 2:11, 4:11	calendar [1] - 21:8 CAMPUS [1] - 2:7 cancel [2] - 24:22, 27:3 cancer [6] - 10:22, 10:24, 11:16, 12:2, 18:7, 19:22 cancers [1] - 11:19 candid [1] - 14:15 candidates [1] - 6:22 cannot [1] - 28:16 care [3] - 8:1, 21:7, 23:21 caretaker [1] - 26:20 Carol [2] - 1:23, 29:19 case [2] - 6:15, 6:17, 7:12, 7:15, 9:16, 11:18, 12:7, 13:10, 13:14, 14:17, 17:15, 18:3, 18:21, 19:14, 19:16, 19:21, 19:25, 22:18, 22:25, 24:21 case-ready [1] - 14:17 case-specific [5] - 7:12, 13:14, 19:16, 19:21, 19:25 caseload [1] - 15:18 cases [43] - 4:17, 5:13, 6:3, 6:16, 6:21, 9:12, 9:21, 10:4, 10:14, 10:15, 10:16, 11:15, 11:19, 11:22, 11:25, 12:15, 12:25, 13:17, 13:20, 13:21, 13:22, 14:14, 14:17, 14:23,	

17:22 common [1] - 11:16 Companies [2] - 2:8, 2:13 complete [3] - 4:20, 5:23, 10:6 completed [1] - 7:3 complex [1] - 5:25 computer [1] - 1:25 computer-aided [1] - 1:25 concern [1] - 7:7 concerned [1] - 26:4 concerns [1] - 28:11 concluded [1] - 29:12 conducted [1] - 23:16 confer [2] - 7:9, 17:22 CONFERENCE [1] - 1:5 conference [3] - 18:13, 18:14, 23:8 confirmation [1] - 27:2 confused [1] - 25:23 connection [1] - 21:19 consent [1] - 24:17 consenting [1] - 24:7 consider [3] - 20:13, 20:15, 21:14 consideration [1] - 20:9 Consumer [4] - 2:8, 2:9, 2:13, 2:14 contemplated [1] - 7:8 continue [1] - 7:5 Continued [1] - 2:1 cooperation [1] - 6:5 core [2] - 20:16, 20:17 correct [3] - 7:4, 13:5, 29:16 counsel [4] - 3:7, 3:10, 4:20, 17:3 count [1] - 18:8 County [1] - 27:16 couple [1] - 10:12 course [5] - 8:10, 8:18, 14:7, 14:13, 25:1 Court [21] - 1:23, 7:18, 9:14, 9:17, 9:19, 9:20, 9:21, 9:24, 10:2, 10:3, 12:21, 12:22, 18:10, 20:8, 20:10, 20:13, 20:14, 20:17, 21:3, 23:15, 29:19 COURT [62] - 1:1, 3:4, 3:11, 3:15, 3:19, 3:22, 3:24, 4:4, 4:13, 5:8, 6:14, 8:8, 8:11,	8:13, 8:16, 8:18, 8:21, 10:5, 10:10, 10:21, 10:23, 11:2, 11:12, 12:4, 12:10, 12:13, 12:24, 13:3, 13:6, 13:18, 14:5, 15:24, 16:5, 17:10, 18:12, 19:17, 20:6, 21:15, 21:18, 21:21, 23:12, 23:20, 23:25, 24:8, 24:11, 24:14, 24:20, 25:2, 25:8, 25:17, 25:22, 26:10, 26:17, 26:22, 27:1, 27:14, 27:19, 27:21, 27:24, 28:2, 28:25, 29:3 court [5] - 3:6, 16:23, 24:5, 24:16, 28:15 courthouse [1] - 15:13 Courthouse [1] - 1:8 courthouses [1] - 15:15 courtroom [1] - 17:14 COURTROOM [4] - 8:19, 24:6, 24:9, 24:18 courtrooms [1] - 29:6 COVID [4] - 6:2, 14:14, 14:24, 22:7 CRC [1] - 29:19 CRCR [1] - 29:19 CRI [1] - 29:19 criminal [6] - 14:17, 14:21, 15:4, 15:16, 22:7, 22:18 CRR [1] - 29:19 custody [4] - 14:25, 15:1, 15:6, 16:14 cutting [1] - 10:1	deceased [1] - 5:15 decided [2] - 23:3, 26:2 decides [1] - 20:18 defendant [2] - 4:16, 12:15 Defendants [2] - 2:8, 2:13 defendants [7] - 3:24, 4:8, 4:10, 4:12, 18:17, 20:25, 21:1 defense [5] - 5:17, 13:12, 13:13, 17:3, 19:11 define [1] - 25:10 defined [1] - 26:1 defining [1] - 26:3 definition [1] - 26:4 delay [2] - 9:10, 17:7 delayed [1] - 7:13 demands [1] - 20:10 Democratic [2] - 22:10 dependent [1] - 22:3 deployed [1] - 28:23 depote [1] - 7:14 deposed [2] - 6:20, 7:14 deposition [1] - 6:18 depositions [16] - 4:21, 5:14, 5:21, 5:22, 5:24, 6:4, 6:17, 7:3, 7:5, 7:20, 9:14, 9:24, 10:3, 10:6, 20:2, 23:16 depressed [1] - 14:20 DEPUTY [4] - 8:19, 24:6, 24:9, 24:18 despite [1] - 21:6 devise [1] - 18:11 diagnosed [2] - 11:9 died [1] - 6:25 different [12] - 6:6, 6:7, 7:22, 11:8, 11:10, 11:14, 18:19, 19:7, 19:15, 21:10, 28:12 difficult [1] - 5:24 dig [1] - 26:5 discovered [1] - 20:21 discovery [10] - 4:21, 4:22, 5:13, 7:12, 9:13, 13:14, 19:12, 19:25, 22:3 discussion [2] - 13:19, 28:15 disheartened [1] - 14:19 dispositive [3] - 17:5, 19:11, 25:11 dispute [1] - 4:24	distinguishing [1] - 13:3 distortion [1] - 8:6 District [1] - 3:3 DISTRICT [3] - 1:1, 1:1, 1:11 districts [1] - 28:12 DOCKET [1] - 1:3 doctor [2] - 5:24, 6:10 doctors [5] - 6:8, 7:14, 7:23, 9:5, 9:8 doctors' [1] - 9:14 done [7] - 10:7, 10:10, 10:13, 17:12, 19:25, 22:23 doses [1] - 27:4 down [9] - 7:14, 8:6, 9:2, 9:14, 9:22, 14:1, 20:12, 20:16, 22:16 DRINKER [1] - 2:6 Drinker [1] - 4:7 DRIVE [1] - 1:15 dropped [1] - 11:1 due [1] - 5:25 during [2] - 20:23, 22:7	expecting [1] - 7:19 expert [5] - 7:11, 13:14, 19:12, 19:25, 22:3 experts [1] - 11:18
F				
fact [2] - 14:16, 22:2 facto [1] - 8:3 Faegre [1] - 4:7 FAEGRE [1] - 2:6 fairly [1] - 12:17 families [1] - 26:13 family [2] - 5:16, 28:6 far [1] - 5:20 Farrell [3] - 1:23, 3:6, 29:19 fashion [1] - 17:1 FCRR [1] - 29:19 February [6] - 6:9, 20:15, 23:9, 23:11 federal [2] - 28:16, 29:1 few [2] - 5:21, 7:17 figure [3] - 13:16, 20:12, 21:4 filed [1] - 11:25 filing [1] - 22:1 fill [1] - 22:8 fine [5] - 10:5, 23:21, 25:4, 26:13, 26:14 FIRM [1] - 1:20 firms [1] - 6:7 first [12] - 4:18, 5:17, 5:18, 6:1, 10:15, 13:7, 14:7, 14:21, 15:7, 19:5, 20:12, 22:18 Fisher [1] - 1:8 fit [2] - 18:20, 19:1 five [1] - 11:4 flavor [1] - 15:4 FLOM [1] - 2:10 FLORHAM [1] - 2:7 focus [3] - 11:17, 21:4, 21:9 focused [1] - 11:20 following [2] - 18:12, 23:23 FOR [1] - 1:1 force [1] - 15:9 foregoing [1] - 29:16 form [1] - 11:16 forms [1] - 11:22 forward [9] - 4:16, 5:22, 7:5, 7:9, 10:8, 16:21, 21:6, 22:17, 28:23 four [1] - 20:18				
E				
e-mails [1] - 24:19 earliest [1] - 22:13 EAST [1] - 1:15 East [2] - 1:8, 16:3 educate [1] - 23:9 education [1] - 23:6 either [2] - 9:8, 23:17 employed [1] - 12:22 employees [2] - 28:13, 28:16 end [3] - 3:17, 6:2, 6:9 endometrioid [1] - 11:4 engage [1] - 28:14 enter [1] - 4:3 entertaining [1] - 3:21 entitled [1] - 29:17 epithelial [1] - 11:16 ESQUIRE [7] - 1:14, 1:17, 1:20, 2:3, 2:6, 2:11, 2:11 essentially [1] - 5:14 et [1] - 6:25 event [1] - 16:20 evidentiary [1] - 17:11 example [2] - 18:6, 19:20 exceptions [1] - 5:22 excuse [2] - 10:21, 11:11 Executive [1] - 17:22				
D				
DANIEL [1] - 1:14 Date [1] - 29:21 date [2] - 16:12, 23:10 Daubert [9] - 7:12, 13:15, 17:4, 17:10, 17:12, 19:16, 19:22, 19:24, 20:23 days [5] - 4:20, 6:12, 10:2, 10:5, 20:13 DC [2] - 1:18, 2:12 de [1] - 8:3 deadline [1] - 7:4 deadlines [3] - 7:18, 8:24, 9:4 deal [2] - 12:9, 19:22 dealing [2] - 6:1, 6:7				

<p>frankly [8] - 6:5, 7:6, 7:22, 9:6, 9:8, 9:15, 20:10, 23:15</p> <p>FREDA [1] - 1:11</p> <p>Freda [1] - 3:2</p> <p>friends [2] - 28:6</p> <p>froze [1] - 8:21</p> <p>frozen [5] - 8:9, 8:13, 8:19, 15:25, 21:15</p> <p>full [2] - 15:9, 15:14</p>	<p>helps [1] - 17:18</p> <p>high [12] - 11:3, 11:5, 11:15, 12:7, 12:8, 12:16, 13:1, 13:4, 14:9, 19:6, 19:14</p> <p>high-grade [4] - 11:3, 11:15, 12:7, 12:8</p> <p>highlights [1] - 11:10</p> <p>HILL [1] - 1:15</p> <p>hit [1] - 14:24</p> <p>hold [1] - 8:8</p> <p>holiday [2] - 24:1, 25:3</p> <p>Honor [28] - 3:9, 3:13, 3:21, 4:9, 4:11, 5:5, 5:6, 5:12, 7:10, 7:16, 10:9, 11:11, 11:17, 12:12, 12:20, 13:16, 13:25, 15:23, 16:2, 17:20, 20:4, 20:22, 21:10, 23:13, 23:22, 26:7, 26:25, 27:12</p> <p>Honor's [1] - 14:2</p> <p>Honorable [1] - 3:2</p> <p>HONORABLE [1] - 1:11</p> <p>hope [1] - 28:10</p> <p>hopeful [1] - 22:6</p> <p>hopefully [2] - 9:19, 23:16</p> <p>hoping [1] - 27:24</p> <p>hospitals [1] - 27:5</p> <p>hours [1] - 27:13</p> <p>house [1] - 27:17</p> <p>hurry [1] - 16:24</p>	<p>instances [1] - 5:25</p> <p>interesting [2] - 12:18, 28:22</p> <p>internet [1] - 16:3</p> <p>inventory [1] - 19:23</p> <p>involve [1] - 14:25</p> <p>involved [1] - 5:13</p> <p>issue [4] - 4:18, 7:19, 7:22, 29:4</p> <p>issues [6] - 4:13, 6:23, 17:4, 22:6, 29:1, 29:8</p> <p>IT [1] - 16:2</p>	<p>lawyers [2] - 6:6, 9:8</p> <p>learn [1] - 12:1</p> <p>learning [1] - 11:24</p> <p>least [1] - 21:12</p> <p>left [2] - 4:5, 13:15</p> <p>Leigh [2] - 3:13, 23:17</p> <p>LEIGH [1] - 1:20</p> <p>letter [3] - 4:14, 25:11, 25:24</p> <p>letters [1] - 4:23</p> <p>level [1] - 29:4</p> <p>LIABILITY [1] - 1:5</p> <p>lifetime [1] - 23:5</p> <p>likely [1] - 19:15</p> <p>likewise [1] - 24:13</p> <p>limit [2] - 9:13</p> <p>limitation [1] - 4:25</p> <p>limitations [2] - 17:5, 20:1</p> <p>line [1] - 28:5</p> <p>list [2] - 14:19, 14:22</p> <p>literature [1] - 18:9</p> <p>LITIGATION [1] - 1:6</p> <p>litigation [1] - 10:18</p> <p>lives [1] - 7:24</p> <p>living [1] - 5:15</p> <p>LLC [1] - 1:14</p> <p>LLP [3] - 1:17, 2:6, 2:10</p> <p>loads [1] - 22:14</p> <p>look [7] - 9:16, 12:19, 12:20, 13:9, 21:12, 22:6, 25:8</p> <p>looked [2] - 12:6, 12:15</p> <p>looking [4] - 13:22, 15:11, 18:22, 21:5</p> <p>looks [1] - 24:2</p> <p>lost [3] - 8:25, 15:23, 15:24</p> <p>low [7] - 11:5, 12:16, 13:1, 13:4, 14:10, 19:6</p>	<p>MEAGHER [1] - 2:10</p> <p>mean [5] - 14:6, 14:23, 18:6, 23:21, 25:3</p> <p>mechanical [1] - 1:25</p> <p>meet [2] - 7:9, 20:15</p> <p>mega [1] - 27:3</p> <p>megas [1] - 27:5</p> <p>member [1] - 5:16</p> <p>Michelle [2] - 3:9, 17:21</p> <p>MICHELLE [1] - 1:17</p> <p>might [6] - 15:21, 16:4, 17:11, 18:5, 23:23, 25:11</p> <p>mind [1] - 14:3</p> <p>mine [2] - 27:4, 27:21</p> <p>miss [1] - 26:10</p> <p>missed [1] - 8:23</p> <p>misunderstood [1] - 20:8</p> <p>moment [2] - 5:3, 8:9</p> <p>Monday [1] - 25:3</p> <p>MONTGOMERY [1] - 1:22</p> <p>month [2] - 7:13, 29:11</p> <p>morning [2] - 24:4, 24:15</p> <p>most [6] - 5:21, 8:23, 11:16, 12:2, 13:16, 14:8</p> <p>motion [8] - 17:10, 17:16, 19:10, 19:11, 19:16, 19:22, 22:1, 25:13</p> <p>motions [16] - 7:12, 13:15, 17:4, 17:5, 17:6, 19:19, 19:24, 20:1, 20:20, 21:10, 21:11, 21:12, 23:2, 23:3, 25:11</p> <p>MOTLEY [1] - 1:14</p> <p>moustache [1] - 3:19</p> <p>move [9] - 7:7, 10:4, 10:8, 17:14, 22:12, 22:15, 23:4, 23:10, 28:10</p> <p>moving [2] - 15:14, 16:5</p> <p>MR [11] - 3:16, 3:21, 3:25, 4:11, 5:4, 16:2, 27:11, 27:16, 27:20, 27:23, 28:1</p> <p>MS [66] - 3:9, 3:12, 3:13, 4:3, 4:7, 4:9, 5:5, 5:6, 5:11, 5:12, 6:15, 7:16, 8:10, 8:12, 8:15, 8:17, 9:1, 10:9, 10:19, 10:20, 10:22, 10:24, 11:3,</p>
G				
<p>GEREL [1] - 1:17</p> <p>grade [7] - 11:3, 11:5, 11:6, 11:15, 12:7, 12:8, 19:14</p> <p>grand [1] - 18:1</p> <p>group [13] - 11:19, 11:22, 11:25, 12:18, 12:23, 13:8, 14:8, 19:23, 20:17, 21:9, 26:8</p> <p>groupings [2] - 18:24, 19:20</p> <p>groups [4] - 13:13, 14:11, 14:12, 19:2</p> <p>grow [1] - 3:25</p> <p>guess [9] - 4:18, 4:21, 10:16, 14:5, 14:10, 17:20, 20:14, 23:7, 23:16</p> <p>guidance [1] - 25:22</p>				
H				
<p>half [1] - 11:8</p> <p>handle [1] - 17:6</p> <p>Happy [1] - 3:16</p> <p>happy [1] - 28:7</p> <p>Hatch [1] - 22:22</p> <p>Hatch-Waxman [1] - 22:22</p> <p>Health [1] - 27:16</p> <p>health [3] - 28:18, 28:19, 29:3</p> <p>healthy [1] - 28:7</p> <p>hear [6] - 8:14, 8:20, 9:20, 13:23, 19:21, 29:10</p> <p>heard [1] - 13:23</p> <p>hearing [2] - 17:11, 28:19</p> <p>hearings [1] - 17:12</p> <p>held [1] - 3:1</p> <p>hello [4] - 8:11, 8:12, 21:16, 21:17</p> <p>help [3] - 22:14, 22:15, 23:23</p> <p>helped [1] - 8:16</p>				
	I			
	<p>idea [4] - 13:21, 19:4, 23:1, 28:3</p> <p>import [1] - 6:13</p> <p>importantly [1] - 6:18</p> <p>imposed [4] - 7:4, 7:18, 8:24, 9:4</p> <p>IN [1] - 1:4</p> <p>Inc [4] - 2:8, 2:9, 2:13, 2:14</p> <p>included [1] - 13:1</p> <p>indeed [2] - 7:19, 12:19</p> <p>indicated [2] - 8:5, 18:17</p> <p>indiscernible [1] - 5:7</p> <p>individuals [1] - 14:25</p> <p>inform [1] - 17:23</p> <p>information [5] - 9:23, 9:24, 17:20, 21:24, 23:15</p> <p>Initiative [1] - 27:17</p> <p>instance [1] - 14:22</p>			
		J		
		<p>J&J [2] - 4:10, 4:12</p> <p>Jackie [3] - 3:6, 24:4, 24:14</p> <p>January [7] - 1:9, 3:17, 4:15, 6:8, 7:8, 23:8, 29:21</p> <p>JERSEY [1] - 1:1</p> <p>Jersey [3] - 1:9, 27:2, 27:7</p> <p>John [1] - 4:11</p> <p>JOHN [1] - 2:11</p> <p>JOHNSON [2] - 1:4</p> <p>Johnson [14] - 2:8, 2:8, 2:9, 2:13, 2:13, 2:14, 4:8</p> <p>JUDGE [1] - 1:11</p> <p>Judge [1] - 3:3</p> <p>judge's [1] - 14:17</p> <p>judges [6] - 14:19, 20:10, 21:8, 22:8, 22:13</p> <p>judiciary [1] - 28:20</p> <p>jury [5] - 15:12, 16:16, 16:19, 29:7</p>		
		K		
		<p>keep [1] - 18:14</p> <p>kind [5] - 8:25, 14:19, 15:4, 21:3, 22:24</p> <p>kinds [2] - 14:12, 17:5</p> <p>known [2] - 2:9, 2:14</p>		
		L		
		<p>lag [1] - 23:2</p> <p>LAKE [1] - 1:15</p> <p>LAPINSKI [1] - 1:14</p> <p>larger [1] - 12:23</p> <p>last [1] - 14:24</p> <p>Laughter [2] - 3:23, 4:2</p> <p>LAW [1] - 1:20</p> <p>law [1] - 6:7</p>		
			M	
			<p>mails [1] - 24:19</p> <p>majority [3] - 12:25, 18:1, 19:5</p> <p>management [1] - 6:15</p> <p>MAPLE [1] - 2:3</p> <p>March [1] - 16:17</p> <p>MARKETING [1] - 1:5</p> <p>mass [1] - 27:18</p> <p>massive [1] - 16:3</p> <p>match [1] - 12:19</p> <p>matter [1] - 29:17</p> <p>maximum [1] - 5:14</p> <p>MDL [2] - 11:25, 15:18</p>	

11:11, 11:13, 12:5, 12:11, 12:14, 13:2, 13:5, 13:9, 13:25, 15:23, 17:9, 17:20, 19:12, 19:18, 20:4, 20:7, 21:17, 21:20, 23:11, 23:13, 23:19, 23:22, 24:12, 24:13, 25:1, 25:5, 25:6, 25:7, 25:14, 25:15, 25:16, 25:19, 25:20, 25:21, 26:7, 26:15, 26:16, 26:18, 26:19, 26:20, 26:24, 28:22, 29:2 mucinous [3] - 11:4, 19:20, 19:22 multi [1] - 13:20 multi-plaintiff [1] - 13:20 must [1] - 26:2	notice [1] - 17:2 notion [1] - 17:10 number [8] - 12:25, 14:2, 14:3, 14:4, 18:25, 20:18, 20:19, 27:7 NUMBER [1] - 1:3 numbers [1] - 12:18 NW [1] - 1:18	P p.m [3] - 1:10, 3:3, 29:12 P.O [1] - 1:21 pandemic [1] - 17:6 pare [1] - 14:1 parents [1] - 27:12 Parfitt [2] - 3:10, 8:23 PARFITT [29] - 1:17, 3:9, 3:12, 7:16, 8:10, 8:12, 8:15, 8:17, 9:1, 10:9, 10:19, 12:11, 12:14, 13:2, 13:5, 20:4, 20:7, 21:17, 21:20, 23:13, 24:13, 25:1, 25:7, 25:15, 25:21, 26:16, 26:18, 26:20, 26:24 PARK [1] - 2:7 part [3] - 5:21, 13:7, 27:11 particular [1] - 20:11 particularly [2] - 19:13, 19:14 parties [1] - 6:5 patent [3] - 16:17, 17:12, 22:21 path [1] - 7:9 patient [1] - 9:6 patients [1] - 8:1 PATRICIA [1] - 1:20 PC [1] - 2:2 people [4] - 15:3, 16:2, 27:8, 28:24 per [1] - 6:17 percent [3] - 11:15, 11:23, 12:17 percentage [1] - 18:9 percentages [1] - 12:19 perfectly [1] - 21:20 perhaps [8] - 14:7, 17:3, 20:7, 20:8, 20:13, 20:15, 21:14, 23:18 period [1] - 10:7 phase [4] - 5:13, 6:19, 7:7, 10:4 Phase [4] - 25:24, 26:1, 26:2, 26:4 phrase [1] - 26:8 physician [1] - 5:20 physicians [3] - 5:17, 5:19, 6:1 pick [1] - 13:12 picks [2] - 13:11, 13:12 picture [1] - 15:23 place [2] - 3:7, 15:10	Placitella [1] - 3:17 PLACITELLA [12] - 2:2, 2:3, 3:16, 3:21, 3:25, 5:4, 16:2, 27:11, 27:16, 27:20, 27:23, 28:1 plaintiff [11] - 3:10, 4:15, 5:14, 5:15, 13:11, 13:12, 13:17, 13:20, 13:21, 13:22 plaintiffs [14] - 4:25, 5:9, 5:18, 9:18, 10:17, 11:1, 11:7, 11:8, 13:11, 13:24, 18:22, 20:25, 25:24 Plaintiffs [4] - 1:16, 1:19, 1:22, 2:4 Plaintiffs' [1] - 3:14 plaintiffs' [4] - 4:19, 5:22, 19:23, 20:2 plan [2] - 15:11, 27:11 plea [1] - 16:12 pleas [2] - 16:14, 16:15 plexiglass [1] - 29:6 point [2] - 9:4, 18:11 pool [11] - 6:21, 7:11, 10:13, 10:24, 10:25, 11:15, 12:5, 13:10, 18:7, 19:21 position [1] - 17:15 positions [1] - 4:15 possible [1] - 15:19 POWDER [1] - 1:4 practice [4] - 19:10, 19:11, 28:11, 28:12 PRACTICES [1] - 1:5 preference [2] - 23:17, 23:20 prepared [1] - 16:23 present [1] - 13:15 president [1] - 22:11 Presidents [1] - 24:1 pretrial [1] - 15:1 pretty [2] - 24:1, 27:24 prevalent [1] - 14:8 priority [1] - 22:24 problem [5] - 8:7, 9:1, 9:9, 9:11, 29:5 proceeding [2] - 5:1, 20:23 PROCEEDINGS [1] - 3:1 Proceedings [1] - 1:25 proceedings [3] - 6:24, 29:12, 29:17 process [4] - 9:10, 10:1, 12:2, 17:23 produced [1] - 1:25	PRODUCTS [2] - 1:4, 1:5 profile [1] - 11:22 progress [1] - 21:13 proposal [1] - 14:7 propose [2] - 14:11, 17:19 proposes [1] - 9:11 purposes [1] - 11:24 push [1] - 14:21 put [1] - 13:21
N N.W [1] - 2:12 naming [1] - 26:8 narrow [3] - 9:22, 20:12, 20:16 narrowed [1] - 26:8 narrower [1] - 21:9 narrowing [2] - 7:10, 10:12 navigate [1] - 7:1 Navy [2] - 28:23 near [1] - 27:17 need [18] - 3:4, 4:22, 7:15, 8:3, 9:21, 9:23, 10:15, 13:9, 14:1, 16:10, 16:21, 17:21, 19:12, 19:24, 20:2, 21:23, 23:6, 25:18 needed [1] - 18:13 needs [3] - 9:6, 9:7, 13:7 negotiated [1] - 6:16 NEW [2] - 1:1, 2:12 New [5] - 1:9, 3:16, 27:2, 27:7, 28:6 next [9] - 7:7, 9:17, 10:4, 10:11, 17:19, 22:1, 23:8, 26:3, 29:11 NJ [4] - 1:15, 2:4, 2:7, 29:19 NJ-CRCR [1] - 29:19 nobody [1] - 22:1 non [1] - 19:14 non-high-grade [1] - 19:14 nothing [1] - 26:1	O O'Dell [3] - 3:14, 6:17, 7:4 O'DELL [15] - 1:20, 3:13, 5:5, 5:12, 11:11, 11:13, 13:25, 15:23, 17:20, 23:19, 23:22, 25:6, 25:16, 25:20, 26:7 obfuscate [1] - 9:9 obfuscation [1] - 7:21 obviously [2] - 22:1, 23:21 occur [1] - 28:10 Ocean [1] - 27:16 OF [1] - 1:1 Office [1] - 14:16 Official [1] - 1:23 old [3] - 9:10, 10:25, 26:5 oldest [1] - 28:22 once [1] - 22:15 one [21] - 5:8, 7:18, 10:25, 11:4, 11:6, 13:12, 13:25, 14:3, 14:7, 14:12, 15:12, 16:17, 19:21, 20:22, 22:19, 24:3, 24:15, 27:3, 27:4, 27:9 ones [1] - 22:22 open [3] - 16:11, 22:15, 24:2 opposed [1] - 22:20 optimistic [2] - 15:17, 22:12 order [6] - 6:15, 7:6, 7:8, 9:22, 14:1, 24:19 ordered [1] - 10:3 orders [2] - 25:25, 26:5 outages [1] - 16:3 ovarian [3] - 11:16, 11:19, 12:2 overall [3] - 11:22, 11:24, 12:5	Q quickly [3] - 15:19, 15:20, 16:24 quite [2] - 18:5, 26:12	R raft [1] - 6:23 random [2] - 13:11, 13:13 range [1] - 11:23 rationality [1] - 16:21 RDR [1] - 29:19 RE [1] - 1:4 read [2] - 25:3, 25:23 reading [1] - 4:23 ready [12] - 4:17, 14:17, 15:21, 16:9, 16:22, 16:25, 17:7, 17:16, 23:1, 23:4 real [2] - 7:21, 28:9 realistically [1] - 21:5 reality [3] - 14:13, 15:20, 16:7 really [7] - 7:10, 16:7, 17:15, 19:13, 23:21, 27:14, 28:14 reap [1] - 27:8 reason [3] - 8:8, 11:18, 16:10 reasoned [1] - 17:1 reasons [3] - 28:17, 28:18, 28:19 REATH [1] - 2:6 receive [1] - 24:24 recently [1] - 11:3 recognized [1] - 20:23 recommend [1] - 7:10 record [2] - 3:8, 29:17 recorded [1] - 1:25 records [2] - 6:3, 6:24 RED [1] - 2:4 reduce [1] - 22:14 reference [1] - 25:24 refine [1] - 21:22 regard [8] - 4:15, 7:17, 8:5, 9:5, 9:21, 10:14,	

20:9, 21:13 religious ^[1] - 28:17 remote ^[1] - 3:1 REMOTE ^[1] - 1:6 replaced ^[1] - 11:1 Reporter ^[1] - 1:23 reporter ^[1] - 3:6 Reporter/ Transcriber ^[1] - 29:19 representative ^[13] - 5:16, 10:17, 11:21, 12:17, 12:22, 13:16, 14:6, 14:11, 17:24, 18:5, 18:8, 18:18, 19:2 request ^[2] - 4:19, 6:13 require ^[5] - 17:11, 28:13, 28:16, 28:17, 28:24 required ^[1] - 19:9 requirements ^[1] - 28:20 respond ^[3] - 7:16, 12:11, 20:4 retrofitted ^[1] - 29:6 RICE ^[1] - 1:14 ripe ^[2] - 21:12, 25:13 RMR ^[1] - 29:19 road ^[3] - 7:14, 8:6, 9:15 Robert ^[1] - 27:22 role ^[1] - 20:11 ROTH ^[1] - 2:2 run ^[1] - 14:16	seeing ^[3] - 3:20, 7:22, 8:2 seem ^[3] - 12:19, 18:8, 21:2 selected ^[1] - 7:15 selection ^[1] - 9:18 self ^[4] - 7:4, 7:18, 8:24, 9:4 self-imposed ^[4] - 7:4, 7:18, 8:24, 9:4 Senate ^[1] - 22:11 senators ^[1] - 22:10 Senators ^[1] - 22:11 send ^[3] - 18:24, 24:19, 25:8 senior ^[1] - 27:8 sense ^[4] - 11:14, 12:3, 20:12, 29:7 sensitive ^[1] - 22:22 sent ^[3] - 4:14, 26:11, 28:5 sentencing ^[2] - 24:4, 24:15 sentencings ^[1] - 16:15 serous ^[18] - 11:4, 11:5, 11:15, 11:16, 11:19, 11:23, 12:2, 12:7, 12:8, 12:15, 12:25, 14:8, 17:25, 18:3, 19:4, 19:6, 19:14 set ^[1] - 24:20 Sharko ^[7] - 4:7, 6:14, 8:5, 9:11, 13:6, 18:17, 22:2 SHARKO ^[24] - 2:6, 4:3, 4:7, 5:6, 5:11, 6:15, 10:20, 10:22, 10:24, 11:3, 12:5, 13:9, 17:9, 19:12, 19:18, 23:11, 24:12, 25:5, 25:14, 25:19, 26:15, 26:19, 28:22, 29:2 Sharko's ^[1] - 13:23 short ^[1] - 10:1 shortly ^[1] - 20:16 show ^[1] - 8:3 side ^[2] - 9:9, 19:11 sides ^[2] - 9:15, 9:22 similar ^[1] - 28:25 simply ^[1] - 9:24 Simultaneous ^[1] - 5:7 single ^[3] - 13:17, 13:21, 13:22 single-plaintiff ^[2] - 13:21, 13:22 site ^[2] - 27:4, 27:18	sitting ^[1] - 16:12 situation ^[3] - 7:25, 8:2, 9:7 six ^[3] - 13:13, 20:18, 22:9 SKADDEN ^[1] - 2:10 SLATE ^[1] - 2:10 slightly ^[1] - 11:14 slow ^[1] - 9:2 slowing ^[1] - 22:16 small ^[2] - 18:6, 18:9 smaller ^[3] - 6:21, 7:11, 19:19 someone ^[1] - 28:2 sometime ^[2] - 22:7, 23:5 son ^[1] - 28:22 soon ^[1] - 6:9 sorry ^[3] - 12:11, 21:18, 26:7 sounding ^[1] - 28:25 sounds ^[1] - 18:18 specific ^[11] - 7:12, 7:15, 13:14, 17:4, 19:16, 19:21, 19:25, 22:3, 27:4, 27:12, 27:18 Staff ^[1] - 22:11 stage ^[1] - 26:3 standpoints ^[1] - 18:1 start ^[3] - 4:18, 5:9, 9:18 state ^[1] - 29:3 State ^[1] - 1:8 States ^[1] - 3:2 states ^[2] - 11:8, 28:18 STATES ^[2] - 1:1, 1:11 status ^[5] - 4:14, 18:13, 18:14, 24:24, 25:23 STATUS ^[1] - 1:5 statute ^[2] - 17:5, 20:1 stays ^[1] - 22:23 Steering ^[1] - 3:14 stenography ^[1] - 1:25 step ^[1] - 9:17 still ^[5] - 6:7, 22:9, 23:21, 25:3, 29:8 strategy ^[1] - 18:11 Street ^[1] - 1:8 STREET ^[2] - 1:18, 1:21 strengths ^[1] - 12:1 stronger ^[1] - 21:1 stuff ^[1] - 29:7 subgroups ^[1] - 19:7 submitted ^[1] - 11:22 substantially ^[1] - 5:23	subtype ^[3] - 18:1, 18:4, 18:7 subtypes ^[3] - 12:9, 17:25, 19:13 successfully ^[1] - 7:1 suggested ^[1] - 13:10 suggesting ^[1] - 10:2 suggestion ^[1] - 13:23 SUITE ^[1] - 1:15 summer ^[1] - 22:14 supposed ^[2] - 14:24, 24:16 SUSAN ^[1] - 2:6 Susan ^[2] - 4:7, 7:17 system ^[3] - 5:17, 7:21, 12:21	14:15, 21:7, 21:23, 28:3 token ^[1] - 17:2 tomorrow ^[1] - 28:3 took ^[1] - 27:12 topic ^[1] - 21:11 total ^[2] - 12:14, 20:19 totally ^[1] - 16:1 tough ^[1] - 27:7 transcript ^[2] - 1:25, 29:16 transcription ^[1] - 1:25 treaters ^[1] - 6:19 Trenton ^[1] - 1:9 trial ^[12] - 4:17, 6:22, 7:12, 14:3, 15:7, 15:8, 15:12, 15:15, 16:11, 16:12, 19:5, 23:3 trials ^[11] - 5:1, 14:3, 15:8, 15:19, 16:16, 16:17, 16:19, 19:2, 28:14 tried ^[2] - 12:8, 14:24 try ^[9] - 8:22, 13:16, 18:3, 18:4, 18:11, 18:21, 22:19, 23:5 trying ^[12] - 6:8, 7:14, 7:23, 7:25, 8:1, 9:9, 10:14, 13:20, 14:11, 15:25, 17:15 turn ^[1] - 10:11 Two ^[1] - 5:13 two ^[9] - 5:16, 5:18, 14:3, 15:1, 15:14, 20:22, 22:1, 22:10, 22:19 type ^[5] - 9:18, 10:22, 10:24, 18:6, 29:4 types ^[2] - 6:24, 18:18
T				
TALCUM ^[1] - 1:4 ten ^[5] - 11:8, 13:11, 13:12, 22:20 terms ^[2] - 14:2, 17:24 THE ^[67] - 1:1, 1:11, 3:4, 3:11, 3:15, 3:19, 3:22, 3:24, 4:4, 4:13, 5:8, 6:14, 8:8, 8:11, 8:13, 8:16, 8:18, 8:19, 8:21, 10:5, 10:10, 10:21, 10:23, 11:2, 11:12, 12:4, 12:10, 12:13, 12:24, 13:3, 13:6, 13:18, 14:5, 15:24, 16:5, 17:10, 18:12, 19:17, 20:6, 21:15, 21:18, 21:21, 23:12, 23:20, 23:25, 24:6, 24:8, 24:9, 24:11, 24:14, 24:18, 24:20, 25:2, 25:8, 25:17, 25:22, 26:10, 26:17, 26:22, 27:1, 27:14, 27:19, 27:21, 27:24, 28:2, 28:25, 29:3 thinking ^[4] - 14:2, 14:5, 15:25, 18:3 third ^[1] - 12:6 thousand ^[1] - 12:20 Three ^[4] - 25:25, 26:1, 26:2, 26:4 three ^[8] - 5:14, 6:17, 9:24, 10:3, 11:4, 14:23, 15:8, 27:13 three-week ^[1] - 15:8 Thursday ^[2] - 26:23, 27:1 time-sensitive ^[1] - 22:22 today ^[6] - 4:13, 9:19,				
S				
sadly ^[1] - 14:13 safe ^[1] - 24:10 safely ^[1] - 15:12 safer ^[1] - 28:7 safety ^[1] - 28:19 SALES ^[1] - 1:5 saner ^[1] - 28:7 satisfied ^[1] - 21:23 save ^[1] - 10:1 schedule ^[4] - 5:25, 6:1, 19:6, 25:11 scheduled ^[4] - 6:4, 23:8, 26:22, 27:6 schedules ^[1] - 15:15 science ^[1] - 20:25 screen ^[2] - 3:5, 8:21 see ^[14] - 3:5, 6:20, 8:16, 8:18, 8:21, 10:13, 16:5, 18:24, 22:13, 24:3, 27:25, 28:4, 29:9, 29:11				
U				
U.S ^[1] - 1:8 under ^[1] - 22:22 understandable ^[1] - 21:20 unfortunate ^[1] - 16:7 unfortunately ^[1] - 15:5 UNITED ^[2] - 1:1, 1:11 United ^[1] - 3:2 unknown ^[1] - 11:6 up ^[18] - 5:18, 6:17, 6:21, 8:3, 13:14, 14:14, 15:16, 16:11, 16:21, 16:24, 18:17, 18:19, 19:1, 22:4, 22:5, 22:15, 22:21,				

24:20 usual ^[1] - 6:23	Z ZOOM ^[1] - 1:6 Zoom ^[5] - 3:1, 17:13, 22:23, 24:3, 24:16
V	
vacancies ^[2] - 22:9 vaccinated ^[3] - 28:8, 28:16, 28:24 vaccines ^[2] - 15:10, 26:17 various ^[1] - 18:24 vast ^[1] - 12:25 via ^[1] - 3:1 VIA ^[1] - 1:5 videoconference ^[2] - 3:1, 3:5 VIDEOCONFERENC E ^[1] - 1:6 view ^[6] - 9:15, 11:14, 15:17, 17:6, 18:17, 18:19 views ^[1] - 17:22	
W	
wait ^[2] - 5:8, 6:20 waiting ^[1] - 24:18 waived ^[1] - 6:18 wants ^[1] - 10:13 WASHINGTON ^[2] - 1:18, 2:12 Waxman ^[1] - 22:22 Wayne ^[1] - 3:6 wayside ^[1] - 22:19 weaker ^[1] - 21:2 weaknesses ^[1] - 12:1 week ^[3] - 15:8, 23:23 week-long ^[1] - 15:8 weeks ^[1] - 22:1 welfare ^[1] - 29:4 wide ^[1] - 24:2 willing ^[1] - 7:5 Wishing ^[1] - 28:7 witness ^[1] - 17:11 witnesses ^[1] - 17:13 WOLFSON ^[1] - 1:11 Wolfson ^[1] - 3:2 Wood ^[1] - 27:22 wow ^[1] - 26:19	
Y	
Year ^[1] - 3:16 year ^[4] - 6:2, 14:24, 20:22 Year's ^[1] - 28:6 years ^[2] - 15:1, 20:22 yesterday ^[2] - 27:2, 27:12 YORK ^[1] - 2:12	